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FILED

MAR 4 2009

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY  DEPUTY CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
(Fresno Division)

RICHARD REES, et al.,	)	CASE NO. CV-F-05-0297 LJO SMS
	)	
Plaintiffs,	)	<del>4/1</del> [PROPOSED] ORDER ON
	)	PRELIMINARY APPROVAL OF
vs.	)	STIPULATION REGARDING CLASS
	)	ACTION SETTLEMENT; EXHIBITS A-D
	)	
SOUZA'S MILK TRANSPORTATION,	)	Date : March 3, 2009
et al.,	)	Time : 1:00 p.m.
	)	Ctrrm: 4
Defendants.	)	Judge: Hon. Lawrence J. O'Neill
	)	

The parties in this class action have reached a proposed settlement and seek preliminary approval of the proposed Stipulation Regarding Settlement Of Class Action and the Notice of Proposed Class Action Settlement And Fairness Hearing (Ex. 1) and the Claim Forms (Ex. 2 and 3) attached thereto.

The motion came on for an expedited hearing at 1:00 p.m. on March 3, 2009 in Courtroom 4 of this court. Plaintiffs and Class Representatives, Richard Rees and Robert Winters, individually and on behalf of all others similarly situated (collectively "plaintiffs"), appeared in person and with Class counsel Jerry

1 Budin, Law Office of Jerry Budin. Because of the expedited nature  
2 of the hearing, Defendants did not make an appearance. Having  
3 considered the plaintiffs' oral presentation to the Court and all  
4 of the supporting papers previously filed herein, the Stipulation  
5 Regarding Settlement Of Class Action and the exhibits attached  
6 thereto, the Court issues the following Orders:

7 1. This Order incorporates by reference the definitions in  
8 the Stipulation Regarding Settlement of Class Action  
9 ("Stipulation") and all terms defined therein shall have the same  
10 meaning in this Order as set forth therein. The Stipulation is  
11 attached hereto as Exhibit A.

12 2. The Court hereby preliminarily approves the attached  
13 Stipulation. The Court preliminarily finds that the Class members  
14 are similarly situated and meet the requirements for class  
15 certification under F.R.C.P. 23 and as a collective action under 29  
16 U.S.C. §216(b). The Court further preliminarily finds that the  
17 Stipulation appears to be within the range of reasonableness of a  
18 settlement that could ultimately be given final approval by this  
19 court. It appears to the Court that the Stipulation is fair,  
20 adequate and reasonable as to all potential Class Members, when  
21 balanced against the probable outcome of further litigation. It  
22 further appears that counsel for the Parties at this time are  
23 reasonably able to evaluate their respective positions. It further  
24 appears to the Court that settlement at this time will avoid  
25 substantial additional costs to all Parties, as well as the delay  
26 and risks that would be presented by further prosecution of these  
27 Actions. Additionally, it appears that the proposed Stipulation  
28 was reached as a result of intensive, non-collusive, arms-length

1 negotiations.

2 3. A hearing ("Fairness Hearing") shall be held before this  
3 Court on May 18, 2009 at 8:15 a.m. in Courtroom 4 in the United  
4 States District Court for the Eastern District of California,  
5 located at 2500 Tulare Street, Fresno, California, to determine all  
6 necessary matters concerning the settlement, including: whether the  
7 proposed settlement of the Actions on the terms and conditions  
8 provided is fair, adequate, and reasonable, and should be finally  
9 approved by the Court; whether the cases should be dismissed with  
10 prejudice pursuant to the terms of the settlement; whether the  
11 settlement should be approved as fair, adequate, and reasonable to  
12 the Class Members; whether the Court should finally approve the  
13 amount of attorney fees and costs to be awarded Class Counsel,  
14 Jerry Budin.

15 4. The Court hereby approves, as to form and content, the  
16 proposed "Notice of Proposed Class Action Settlement and Fairness  
17 Hearing" ("Notice;" attached hereto as Exhibit B) and the "Claim  
18 Forms" (attached hereto as Exhibit C and D). The Court finds that  
19 the distribution of the Notice substantially in the manner and form  
20 set forth in the Stipulation meets the requirement of due process  
21 under Federal Rule of Civil Procedure 23(e) and 29 U.S.C. §216(b),  
22 that such Notice is the best practicable under the circumstances  
23 and shall constitute due and sufficient notice to all persons  
24 entitled thereto.

25 5. Any class member who wishes to receive a portion of the  
26 settlement fund must complete and submit a properly completed Claim  
27 Form, pursuant to the instructions for making a claim that are set  
28 forth in the Notice, so that it is postmarked no more than forty-

1 five (45) days after the date the Notices are mailed. Any class  
2 member who does not submit a Claim Form will not be entitled to any  
3 recovery, unless the parties agree to allow the late claim.

4 6. Any class member may choose to "opt-out" of and be  
5 excluded from the settlement as provided in the Notice by following  
6 the instructions for requesting exclusion from the Stipulation that  
7 are set forth in the Notice. All requests for exclusion must be  
8 submitted so that they are postmarked no more than thirty (30) days  
9 after the date the Notices are mailed. Any such person who chooses  
10 to "opt out" of and be excluded from the class will not be entitled  
11 to receive any proceeds from this settlement, and will not be bound  
12 by this settlement or have any right to object, appeal, or comment  
13 thereon.

14 7. Any class member who has not validly requested exclusion  
15 from the class and the Stipulation may appear at the Fairness  
16 hearing and may object or express his/her views regarding the  
17 settlement, and may present evidence and file briefs or other  
18 papers, that may be proper and relevant to the issues to be heard  
19 and determined by the Court, as provided in the Notice. However,  
20 no class member or any other person shall be heard or entitled to  
21 object, and no papers or briefs submitted by any such person shall  
22 be received or considered by the Court, unless the person on or  
23 before that day which is thirty (30) days after the Notice is  
24 mailed has filed with the Clerk of this court, and mailed by first  
25 class postage to Class Counsel (Jerry Budin, Law Office of Jerry  
26 Budin, 2401 E. Orangeburg Ave., Modesto, CA 95355) and Defendant's  
27 Counsel (David Dixon, Dowling, Aaron & Keeler, 5060 California  
28 Ave., Suite 620, Bakersfield, CA 93309): (i) a written statement

1 advising if the individual plans to address the Court at the  
2 Fairness Hearing; (ii) a written statement of the individual's  
3 objections; and (iii) any other papers which the individual  
4 purposes to submit to the Court, including any legal briefs or  
5 memoranda. Any such person who does not make an objection in the  
6 manner provided for in this Order shall be deemed to have waived  
7 such objection and shall forever be foreclosed from making any  
8 objection to the settlement.

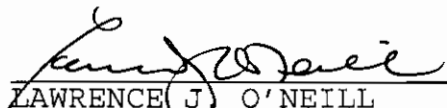
9 8. In the event the Stipulation does not become effective in  
10 accordance with the terms of the Stipulation, or the Stipulation is  
11 not finally approved, or is terminated, canceled or fails to become  
12 effective for any reason, this Order shall be rendered null and  
13 void and shall be vacated, and the Parties shall revert to their  
14 respective positions as of before entering into the Stipulation.

15 9. For purposes of effectuating this settlement, the Court  
16 adopts the Class definitions (FLSA Class 1 and UCA Class 2)  
17 previously certified in this matter on April 24, 2006 (Doc. 32).

18 10. For purposes of effectuating this settlement, the Court  
19 hereby reaffirms the appointment of Jerry Budin as Class Counsel  
20 and Richard Rees and Robert Winters as Class Representatives.

21 IT IS SO ORDERED.

22  
23 DATED: 3-4-09

  
24 LAWRENCE J. O'NEILL  
25 UNITED STATES DISTRICT JUDGE  
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EXHIBIT A



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RICHARD REES, et al.  
6

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8 Dowling, Aaron & Keeler, Inc.  
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9 Bakersfield, California 93309  
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10 Facsimile: (661) 716-3005

11 Attorneys for Defendant,  
SOUZA'S MILK TRANSPORTATION CO., et al.  
12

13 UNITED STATES DISTRICT COURT  
14 EASTERN DISTRICT OF CALIFORNIA  
15 (Fresno Division)  
16

17 RICHARD REES, et al.,	)	CASE NO. CV-F-05-0297 LJO SMS
	)	
18 Plaintiffs,	)	STIPULATION REGARDING
	)	SETTLEMENT OF CLASS ACTION;
19 vs.	)	EXHIBITS 1-3
	)	
20 SOUZA'S MILK TRANSPORTATION	)	
CO., et al.,	)	
	)	
21 Defendants.	)	
22	)	

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1 Plaintiff and Class Representatives Richard Rees and Robert  
2 Winters, on behalf of themselves and on behalf of all members of  
3 two (2) classes hereinafter defined, and Defendants Souza's Milk  
4 Transportation Co. and Manuel B. Souza, Jr. (collectively referred  
5 to as "parties"), hereby stipulate and agree on all of the terms  
6 of a settlement in this matter and agree to request a hearing for  
7 preliminary approval of this class action settlement.

8 **I. INTRODUCTION**

9 This Stipulation Regarding Settlement Of Class Action  
10 ("Stipulation") sets forth the full and final terms by which the  
11 Plaintiffs Richard Rees and Robert Winters, on behalf of themselves  
12 and members of the classes defined herein, and Defendants Souza's  
13 Milk Transportation Co. and Manuel B. Souza, Jr. (collectively  
14 referred to herein as "Souza") have settled and resolved any and  
15 all claims and potential claims between them relating to any  
16 alleged wage and hour violations under the Fair Labor Standards Act  
17 (29 U.S.C. §201 et seq.), the California Labor Code, the California  
18 Industrial Welfare Commission Wage Orders and/or California's  
19 Unfair Competition Act (Cal. Bus. & Prof. Code § 17200 et seq.)  
20 ("UCA" or "17200"), including but not limited to claims that Souza  
21 failed to pay overtime to its truck drivers for hours worked in  
22 excess of forty (40) in a workweek. By agreeing to this  
23 Stipulation, Souza does not admit to any liability and, in fact,  
24 such liability is expressly denied. Souza has voluntarily entered  
25 into this Stipulation to avoid protracted and costly litigation.  
26 Souza has also specifically asserted that the truck drivers were  
27 not subject to the overtime provisions at issue due to the  
28 applicability to the Motor Carrier Act Exemption.

1    **II.     NATURE OF THE CASE AND REASONS FOR SETTLEMENT**

2            This case ("Action"), filed on February 28, 2005 and amended  
3    on June 2, 2007, alleges that Souza failed to pay overtime to its  
4    truck drivers for hours worked in excess of forty (40) in a  
5    workweek. Souza has specifically denied, and continues to deny,  
6    each and every allegation made by the Plaintiffs in this Action.

7            The parties to this Action desire to settle it and have  
8    agreed to enter into this Stipulation for the purpose of resolving  
9    the Action. This Stipulation has been jointly negotiated and  
10   drafted by counsel completely familiar with the legal and factual  
11   issues in the Action, along with the Class Representatives and  
12   representatives of Souza, after extensive discovery and substantial  
13   and extensive discussions regarding claims and defenses by counsel  
14   for the parties, including the financial condition of Souza. The  
15   parties have negotiated this settlement at arm's-length and in good  
16   faith.

17           Based upon their knowledge of the case and extensive  
18   negotiations, all counsel believe that this Stipulation is fair,  
19   reasonable and adequate to resolve this Action in its entirety, and  
20   that settlement at this time on these terms is in the best  
21   interests of all the parties.

22           Counsel and the parties have considered, among other things,  
23   the expense, inconvenience, and time demands of continuing  
24   burdensome and protracted litigation, the risks inherent in  
25   litigation, and the benefits provided by the terms of this  
26   Stipulation. This Stipulation represents the parties' joint  
27   efforts to avoid further litigation and does not represent any  
28   admission of liability by Souza on the merits of this

1 Action. Neither party is responsible for or adopts the  
2 justification for settlement of the other party.

3 **III. GENERAL TERMS OF THE STIPULATION**

4 **A. Definitions**

5 For purposes of this Stipulation and all exhibits hereto, the  
6 capitalized terms in such documents shall have the meanings set  
7 forth below. All terms defined in the singular shall have the same  
8 meaning when used in the plural, and all terms in the plural shall  
9 have the same meaning when used in the singular, unless otherwise  
10 noted.

11 1. "Authorized Claimant" or "Claimant" shall mean only  
12 a person who is entitled to a settlement payment and who has timely  
13 submitted a completed "Claim Form".

14 2. "Claim Forms" ("Claim Forms") shall mean the forms  
15 attached hereto as Exhibits 2 and 3.

16 3. "Claim Form Submission Date" shall mean the postmark  
17 date the completed Claim Form was mailed, or the date of personal  
18 delivery of the completed Claim Form, to the Settlement  
19 Administrator.

20 4. "Class Counsel" or "Plaintiffs' Counsel" shall mean  
21 Jerry Budin of the Law Office of Jerry Budin, 2401 E. Orangeburg,  
22 Suite 675-309, Modesto, CA 95354-1123.

23 5. "Class Representatives" refers only to Plaintiff  
24 Richard Rees and Robert Winters.

25 6. "Court" shall mean the United States District Court,  
26 Eastern District of California.

27 7. "Effective Date" of this Stipulation shall mean the  
28 later of (a) the 15th day after the date of final approval of this

1 Stipulation by the Court, if no objections are made, (b) the 15th  
2 day after this Stipulation becomes final and non-appealable, in the  
3 event that an objection to this Stipulation has been filed or (c)  
4 the 15th day after the issuance of a remittitur in the event of an  
5 appeal.

6 8. "Employee Taxes" shall mean any and all federal,  
7 state and local taxes required to be withheld by Souza as the  
8 employer from the settlement payments for the employees' portion of  
9 taxes, including but not limited to any withholdings required for  
10 federal income tax, Social Security, Medicare and California state  
11 income tax and state disability (SDI).

12 9. "Employer Taxes" shall mean any and all taxes and  
13 contributions imposed by federal, state or local law on Souza as  
14 the employer for the employer's portion of federal Social Security  
15 and Medicare, federal unemployment tax, California state  
16 unemployment tax and any other taxes.

17 10. "Fairness Hearing" or "Final Approval Hearing" shall  
18 mean the Court's public hearing or hearings to determine whether  
19 the proposed Stipulation shall be finally approved.

20 11. "Notice" shall mean that document headed "Notice Of  
21 Proposed Class Action Settlement and Fairness Hearing" (attached  
22 hereto as Exhibit 1).

23 12. "Parties" shall mean the Plaintiffs including the  
24 Class Representatives and all Plaintiff classes and  
25 defendants Souza's Milk Transportation Co. and Manuel B. Souza, Jr.

26 13. "Preliminary Approval Date" of this Stipulation  
27 shall mean the date this Court grants its preliminary approval to  
28

1 this Stipulation.

2 14. "Souza's Counsel" shall mean the law firm of  
3 Dowling, Aaron & Keeler, Inc., 5060 California Avenue, Suite 620  
4 Bakersfield, California 93309, including attorneys Daniel K.  
5 Klingenberger and David A. Dixon.

6 15. "Settlement Administrator" shall refer to Class  
7 Counsel Jerry Budin.

8 16. "Settlement Classes" or "Class Members" shall mean  
9 those classes of persons defined in section IV of this Stipulation.

10 17. "Taxes" shall mean, collectively, all "Employee  
11 Taxes" and "Employer Taxes."

12 **B. Jurisdiction And Venue**

13 The Parties agree that this Court has jurisdiction over  
14 the subject matter of and the parties to this Action and that venue  
15 is proper. The Court shall retain jurisdiction of this Action for  
16 the purpose of entering all orders and judgments authorized  
17 hereunder that may be necessary to implement and enforce the relief  
18 provided herein.

19 **C. Non-Admissions**

20 Souza at all times has denied and continues to deny the  
21 allegations of the Action. Souza has alleged numerous affirmative  
22 defenses to the Action and does not admit to any obligation to pay  
23 any additional compensation, regular or overtime. Souza does not  
24 admit that it violated the FLSA, California Labor Codes, the  
25 California Wage Orders or the UCA, including claims that Souza  
26 failed to pay overtime to its truck drivers for hours worked in  
27 excess of forty (40) in a workweek. Souza expressly denies any such  
28



1 violations, and further asserts the applicability of the Motor  
2 Carrier Act Exemption.

3 Souza's voluntary agreement to the terms of this Stipulation  
4 shall not be deemed an admission of liability and none of the  
5 parties to this Action shall be deemed a prevailing party. There  
6 has been no judicial determination in the Action that Souza has  
7 violated any law, order or regulation of the United States or of  
8 the State of California regarding its payment of wages. This  
9 Stipulation shall not constitute an adjudication and/or finding on  
10 the merits of the case and shall not be used as evidence of  
11 liability, *res judicata* or collateral estoppel in any other legal  
12 proceeding against Souza.

13 Nothing in this Stipulation shall be deemed admissible in any  
14 forum or proceeding as evidence of an admission by Souza that it  
15 has engaged in any practice, act or omission in violation of the  
16 FLSA, California Labor Code, the UCA or any other state or federal  
17 law or regulation. This Stipulation shall not be admissible as  
18 evidence in any forum for any reason, other than in an action to  
19 enforce its terms.

20 **D. Effect Of This Stipulation**

21 This Stipulation fully and finally resolves all claims,  
22 demands and causes of action of the Plaintiffs and the Settlement  
23 Classes as described below that were raised or could have been  
24 raised against Souza, its present and former parent companies,  
25 subsidiaries and affiliates, owners, shareholders, directors,  
26 officers, employees and agents, and representatives of each, at any  
27 time up to and including the Preliminary Approval Date of this  
28 Stipulation, with the exception of those claims of Class Members



1 who timely request exclusion ("opt-out") from the Settlement  
2 Classes and settlement described herein in accordance with the  
3 exclusion procedures set forth in Section X below.

4 The preclusive effect of this Stipulation applies to any and  
5 all claims for legal relief, equitable relief, monetary relief  
6 including, but not limited to, payment of wages, damages, interest,  
7 penalties, attorney fees and any monetary relief available under  
8 the FLSA, California Labor Code, the California Wage Orders,  
9 California Business & Professions Code section 17200 et seq. or any  
10 other federal, state or local law and any other relief directly or  
11 indirectly related to the wage and hour violations alleged in the  
12 Action, including but not limited to claims that Souza failed to  
13 pay overtime to its truck drivers for hours worked in excess of  
14 forty (40) in a workweek

15 The Settlement Class, including the Class Representatives and  
16 each Class Member, waive all rights to which they may be entitled  
17 pursuant to California Civil Code section 1542 with respect to the  
18 aforementioned wage and hour claims. Section 1542 provides as  
19 follows:

20 A general release does not extend to claims  
21 which the creditor does not know or suspect to  
22 exist in his or her favor at the time of  
23 executing the release, which if known by him  
or her must have materially affected his or  
her settlement with the debtor.

24 **E. Duties Of Plaintiffs' Counsel**

25 Plaintiffs' counsel shall prepare all papers associated with  
26 the settlement, including the settlement agreement, the notice to  
27 the class, the claim form, the motion for preliminary approval and  
28 the motion for final approval.

1 **IV. SETTLEMENT CLASSES**

2 This Stipulation shall apply to the two (2) classes of truck  
3 drivers which have been previously certified and formed in this  
4 Action. Those two classes are as follows:

5 Settlement Class 1

6 All persons who are employed or have been  
7 employed by Souza in the State of California  
8 who, on or after February 28, 2002 to May 1,  
9 2005, have worked as a truck driver hauling  
10 dairy products from processing plants to  
11 warehouses and retail establishments solely  
12 within the State of California, have worked in  
excess of forty (40) hours per week without  
being paid overtime compensation for those  
excess hours and have previously joined this  
action by filing a Notice Of Consent To Join  
As Party Plaintiff.

13 The Settlement Class 1 consists of thirty (30) members.

14 Settlement Class 2

15 All persons who are employed or have been  
16 employed by Souza in the State of California  
17 who, on or after February 28, 2001 to May 1,  
18 2005, have worked as a truck driver hauling  
19 dairy products from processing plants to  
20 warehouses and retail establishments solely  
within the State of California, have worked in  
excess of forty (40) hours per week without  
being paid overtime compensation for those  
excess hours and have not previously opted-out  
of this action.

21 The Settlement Class 2 consists of fifty-five (55) members.

22 **V. SETTLEMENT TERMS**

23 **A. The Settlement Sum**

24 For the purpose of satisfying and settling all of the claims of  
25 the Settlement Classes, as those claims are defined here and in the  
26 operative version of the Complaint in the above-captioned action,  
27 Souza shall pay the gross aggregate sum ("Sum") of Forty-Five  
28 Thousand Dollars (\$45,000.00) as described in Section V(F) below.

1 The Sum is the sole payment that Souza shall be required to  
2 make to settle this case and the foregoing claims, including all  
3 claims for attorney fees and costs (including costs of settlement  
4 administration), Employer Taxes and incentive awards to the Class  
5 Representatives.

6 **1. Payments To Class Members**

7 The payments to the Settlement Class Members shall be made on  
8 a pro-rata basis and there shall be no reversion of any portion of  
9 the Sum to Souza.

10 The amount of Thirty Thousand Dollars (\$30,000.00) shall be  
11 allocated to pay the Authorized Claimants from Settlement Class 1  
12 and the amount of Two Thousand Dollars (\$2,000.00) shall be  
13 allocated to pay the Authorized Claimants from Settlement Class 2.

14 **B. Incentive Award**

15 Class Counsel will apply for Incentive Awardd for the Class  
16 Representatived, Richard Rees and Robert Winters, in an amount not  
17 to exceed \$1,000.00 each. The Incentive Awards shall be paid out  
18 of and deducted from the Settlement Sum before the calculation of  
19 payments to each Authorized Claimant. Souza agrees not to oppose  
20 such an application. The Incentive Awards shall be paid at the  
21 same time as the Settlement payments and attorney fees are paid  
22 pursuant to Section F below. The Incentive Award will not be  
23 treated as wages for withholding purposes and Souza will issue a  
24 1099 Form for each Incentive Award.

25 **C. Claims Administration And Filing Procedures**

26 Class Counsel, Jerry Budin, shall serve as Settlement  
27 Administrator. Within thirty (30) days of the Preliminary Approval  
28 Date, the Settlement Administrator shall mail copies of the Notice

1 (Exhibit 1) and the appropriate Claim Form (Exhibit 2 or 3) to  
2 every Settlement Class member at his/her last known address. Any  
3 signed Claim Form submitted in accordance with the procedures set  
4 forth in the Notice and on the Claim Form and postmarked or hand-  
5 delivered within 60 days from the date of mailing of the Notice  
6 shall be considered timely, except that the parties, through their  
7 respective Counsel and subject to Court approval, may accept any  
8 untimely Claim Form.

9 The Parties agree to cooperate in the Settlement  
10 Administration process and to make all reasonable efforts to  
11 control and minimize the costs and expenses incurred in the  
12 administration of the settlement, including the use of Class  
13 Counsel and/or vendors to complete some or all of the claims  
14 administration process. Class counsel shall not seek any attorney  
15 fees for acting as Settlement Administrator beyond the attorney  
16 fees set forth in Sec. VI below.

17 **D. Procedures For Payment Of Claims**

18 In order to promote both fairness and efficiency, each claim  
19 will be paid on a pro-rata basis according to the terms of section  
20 V(A)(1), after verification of the information provided on the  
21 Claim Form. The pro-rata and verification system shall be applied  
22 uniformly, will not be discretionary and may be amended only by  
23 Court Order. Each Authorized Claimant shall be allocated a  
24 commensurate proportion of the Sum after the deduction of attorney  
25 fees and costs, Incentive Award to the Class Representative Hector  
26 Arciniega and the Employer Taxes.

27 Each check issued to an Authorized Claimant shall bear an  
28 inscription indicating that the check will become void if not

1 cashed within one hundred twenty (120) days from the date of the  
2 check's issuance.

3 The awards made to Authorized Claimants shall be deemed wage  
4 payments and shall be subject to tax withholding as described in  
5 Section VII below.

6 **E. Time For Disbursement Of Settlement Payments**

7 Class Counsel shall mail the settlement payments, pursuant to  
8 the terms of this Stipulation, to each Authorized Claimant's last  
9 known mailing address within fifteen (15) days of the receipt of  
10 the payments from Souza. Class Counsel shall attempt to identify  
11 a new address and re-mail the check for any Authorized Claimant  
12 whose check is returned as "Undeliverable".

13 **F. Duties Of Defendants Souza**

14 Defendants Souza shall do the following:

15 1. Souza shall not oppose an application by Class  
16 Counsel for attorney's fees and costs in an amount not to exceed  
17 Eight Thousand Five Hundred Dollars (\$8,500.00).

18 2. Souza will issue the settlement payments for each  
19 individual Authorized Claimant and shall forward them to Class  
20 Counsel for distribution to the Claimants.

21 3. Souza shall deliver the settlement payments for the  
22 Authorized Claimants to Class Counsel on or before one hundred  
23 eighty (180) days after the Effective Date of this Stipulation. If  
24 Souza does not make the payments as specified, each late payment  
25 shall be subject to interest at the rate of 10% per annum from the  
26 due date until paid.

27 **VI. ATTORNEY FEES**

28 Although neither party to this Action is deemed to be a



1 prevailing party, Souza agrees not to oppose Class Counsel's motion  
2 for actual costs and reasonable attorney fees from the Sum in an  
3 amount not to exceed Eight Thousand Five Hundred Dollars  
4 (\$8,500.00). Said motion will be heard in conjunction with the  
5 Fairness Hearing. The attorney fees and costs awarded to Class  
6 Counsel shall be deducted from the Sum before the calculation of  
7 the payments to each Authorized Claimant and shall be paid at the  
8 same time as those payments.

9 **VII. TAXABILITY OF MONEY PAID TO THE MEMBERS OF THE CLASS**

10 The parties agree that the amounts paid pursuant to this  
11 Stipulation to the Authorized Claimants, excluding the Incentive  
12 Awards, are taxable under the United States Tax Code and the tax  
13 codes of the various states and territories of the United States.  
14 Withholding of taxes and payment of the employers' portion of taxes  
15 by Souza shall be in accordance with applicable law, as stated in  
16 Revenue Ruling 2008-29 and Circular E. Pursuant to those  
17 authorities, withholdings for those Authorized Claimants who are  
18 not eligible to receive the optional flat rate withholding under  
19 §31.3402(g)-1(a)(7)(i) of the regulations shall be determined by the  
20 aggregate procedure described in §31.3402(g)-1(a)(6). For those  
21 Authorized Claimants eligible for both the optional flat rate  
22 withholding or the aggregate procedure, withholdings shall be  
23 determined by whichever of the two methods Class Counsel shall  
24 specify, and this Stipulation and shall be based on an annual  
25 payroll period. Prior to the issuance of the settlement payments,  
26 Class Counsel shall notify which withholding method shall be used  
27 as to those Authorized Claimants eligible for either method, and

28 ///



1 Souza will notify Class Counsel as to the amounts of the Employee  
2 Taxes and Employer Taxes based on the selection made by Class  
3 Counsel. No representations are made by or to any party to this  
4 Stipulation as to the tax consequences of the monetary payments  
5 pursuant to this Stipulation. Each person receiving payment of  
6 money pursuant to this Stipulation shall be responsible for their  
7 own tax liability for payments made herein and the allocations  
8 specified herein.

9 **VIII. STATUS AND DISPOSITION OF UNCLAIMED FUNDS**

10 One-Hundred Fifty (150) days after Class Counsel has  
11 distributed each payment to the Authorized Claimants, Souza shall  
12 make a written report to Class Counsel of whether any checks drawn  
13 on the Sum were returned or unpaid. At that time, any unclaimed  
14 funds shall be distributed by Class Counsel on a pro-rata basis to  
15 the other Authorized Claimants.

16 **IX. NO APPEAL ON BEHALF OF CLASS REPRESENTATIVES OR PLAINTIFFS**

17 This Stipulation is the product of extensive negotiation by  
18 counsel completely familiar with the legal and factual issues in  
19 these cases, along with representatives of the parties, after  
20 extensive discovery and substantial and extensive discussions  
21 regarding claims and defenses by counsel for all the parties.  
22 Class Counsel agrees that he shall not appeal any portions of this  
23 Stipulation on behalf of the Class Representatives or Class Members  
24 should this Stipulation be adopted in whole or modified in part by  
25 the Court, except Class Counsel reserves the right to appeal any  
26 award of attorney fees only in the event that the Court shall grant  
27 an amount less than \$8,500.00 in response to Class Counsel's  
28 motion, as described in Section VI.

**X. NOTICE AND OPPORTUNITY FOR OBJECTIONS AND TO SEEK EXCLUSION**

Each Settlement Class Member shall be given notice so that they may have an opportunity to either object to the terms of the Stipulation or to decide whether to exclude themselves from participation in the Settlement. Class Counsel shall send the Notice to all Settlement Class Members by first class mail to each Settlement Class Member's last known address. The Notice shall include a provision notifying the class members of their right to either be excluded (opt-out) from the Classes or to object to the terms of this Stipulation.

Within 30 days from mailing of the Notice, members of the Classes may file objections to the terms of the Stipulation or may exclude themselves from membership in the Classes. Any exclusions shall be made in writing and sent to Class Counsel, who shall promptly provide copies of all exclusions it receives to all counsel.

No objections will be heard or considered at the Fairness Hearing unless the objecting party previously submitted his or her objections in writing in accordance with the terms of this Stipulation and the Notice.

**XI. NO RETALIATION**

Souza agrees not to retaliate or take any adverse employment action against any Class Member as a result of their participation in the Action.

**XII. MISCELLANEOUS PROVISIONS**

This Stipulation comprises the full and exclusive agreement of the parties with respect to the matters discussed herein. No waiver, modification or amendment of any provision of this

1 Stipulation shall be effective unless made in writing, approved by  
2 all Parties to this Stipulation and approved by the Court or  
3 ordered by the Court.

4 In the event (i) the Court does not enter the Preliminary  
5 Order specified herein; (ii) the Court does not finally approve the  
6 settlement as provided herein; (iii) the Court does not enter the  
7 Final Judgment as provided herein; or (iv) the Stipulation does not  
8 become final for any other reason, this Stipulation shall be null  
9 and void and any order or judgment entered by the Court in  
10 furtherance of this settlement shall be treated as nunc pro tunc.  
11 In such a case, the Action and the parties shall be returned to  
12 their respective statuses as of the date and time immediately prior  
13 to the execution of this Stipulation, and the Parties shall proceed  
14 in all respects as if this Stipulation had not been executed.

15 In the event of Souza's failure to pay the gross aggregate  
16 settlement amount as required by this Stipulation, the Court shall  
17 retain jurisdiction to enforce the terms of this Stipulation and  
18 the parties agree that the Court may enter judgment in the full  
19 amount of the gross aggregate settlement, and that Souza shall be  
20 liable for all attorneys' fees and costs incurred by Class Counsel  
21 in seeking to obtain payment of the gross aggregate settlement  
22 amount. Any monies received by Class Counsel and Class Members  
23 before Souza's failure to complete payment of the gross aggregate  
24 settlement amount shall be offset against any recovery by Class  
25 Counsel and Class Members in any action seeking to enforce the  
26 terms of this Stipulation.

27 The Court shall retain jurisdiction over this Stipulation and  
28 the parties for all purposes until the expiration of the Parties'

1 obligations as set forth herein.

2 Dated: March 3, 2009 /s/ Robert Winters  
3 Plaintiff

4  
5 Dated: March 3, 2009 /s/ Richard Rees  
6 Plaintiff

7  
8 Dated: December 22, 2008 Souza's Milk Transportation Co.  
9 By: /s/ Manuel B. Souza, Jr.

10  
11 Dated: December 22, 2008 /s/ Manuel B. Souza, Jr.  
12 Defendant

13 Dated: March 3, 2009 Law Office of Jerry Budin  
14 /s/ Jerry Budin  
15 Attorney for Plaintiffs

16 Dated: December 23, 2009 Dowling, Aaron & Keeler, Inc.  
17 /s/ David A. Dixon  
18 Attorneys for Defendants

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EXHIBIT B

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RICHARD REES, et al.,

Plaintiffs,

vs.

SOUZA'S MILK TRANSPORTATION CO.,  
et al.,

Defendants.

CASE NO. CV-F-05-0297 LJO SMS

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

TO: All truck drivers who were employed by Souza's Milk Transportation Co. and Manuel B. Souza, Jr. in California at any time from February 28, 2001 through May 1, 2005.

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ THIS NOTICE CAREFULLY.

YOU ARE HEREBY NOTIFIED THAT A HEARING HAS BEEN SCHEDULED FOR \_\_\_\_\_, 2009 BEFORE THE HONORABLE LAWRENCE J. O'NEILL, DISTRICT JUDGE FOR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA, TO CONSIDER A PROPOSED SETTLEMENT OF THE CLAIMS THAT HAVE BEEN BROUGHT ON YOUR BEHALF.

**I. INTRODUCTION**

On February 28, 2005, Plaintiffs Richard Rees and Robert Winters filed a lawsuit against defendants Souza's Milk Transportation Co. and Manuel B. Souza Jr. (collectively referred to herein as "Souza") for unpaid overtime compensation under the federal Fair Labor Standards Act (FLSA) and under the California Unfair Competition Act in the United States District Court, Eastern District of California.

In this lawsuit, Richard Rees and Robert Winters, individually and on behalf of other truck drivers, allege that they worked for Souza as a truck driver and were entitled to overtime compensation for hours worked in excess of forty (40) per week, but that Souza failed to pay them at overtime rates for those overtime hours. Souza denies these allegations and further asserts that no legal duty to pay overtime existed because the Motor Carrier Act Exemption applies.

A tentative settlement of the case has been reached with Souza. The settlement applies to all truck drivers who meet one of the following definitions:

Settlement Class 1

All persons who are employed or have been employed by Souza in the State of California who, on or after February 28, 2002 to May 1, 2005, have worked as a truck driver hauling dairy products from processing plants to warehouses and retail establishments solely within the State of California, have worked in excess of forty (40) hours per week without being paid overtime compensation for those excess hours and have previously joined this action by filing a Notice Of Consent To Join As Party Plaintiff.



Settlement Class 2

All persons who are employed or have been employed by Souza in the State of California who, on or after February 28, 2001 to May 1, 2005, have worked as a truck driver hauling dairy products from processing plants to warehouses and retail establishments solely within the State of California, have worked in excess of forty (40) hours per week without being paid overtime compensation for those excess hours and have not previously opted-out from this action.

**II. THE REASON YOU HAVE RECEIVED THIS NOTICE**

You are either a member of the Settlement Class 1 OR a member of Settlement Class 2. Therefore, your rights will be affected because the Class Representatives, Richard Rees and Robert Winters, and Souza (the Parties) have tentatively settled the lawsuit. Pursuant to that tentative settlement, the Court is considering the entry and final approval of the settlement. By preliminary approval of the proposed settlement on \_\_\_\_\_, 2008, the Court has preliminarily determined that this lawsuit could be settled.

You are hereby notified that:

1. A settlement of the claims of the Settlement Classes has been proposed by Class Representatives Richard Rees and Robert Winters and their attorney and Defendants Souza's Milk Transportation Co. and Manuel B. Souza, Jr. and their attorneys.
2. The proposed Settlement has been submitted to the Court and has received preliminary approval.
3. If you have received a Settlement Class 1 Claim Form, you are a member of Settlement Classes 1. If you have received a Settlement Class 2 Claim Form, you are a member of Settlement Class 2. You have the right to participate in the Settlement by submitting the Claim Form that you have received.
4. You and any other persons in the Settlement Classes have the right to object to the proposed settlement or exclude yourself by following the procedures in Parts V-VI of this notice.
6. A hearing to finally approve the settlement is scheduled for \_\_\_\_\_, 2009 at 8:30 a.m. in Courtroom 4 at the United States Courthouse, 2500 Tulare Street, Fresno, California before the Honorable Lawrence J. O'Neill, U.S. District Judge.

At the hearing, any member of the Settlement Classes may appear and object to the proposed settlement. However, no such person shall be heard at the hearing, and no papers or written briefs shall be considered, unless the procedures set forth in Part V of this Notice have been followed. You should read that part carefully. Settlement Class members who do not make objections in the manner provided in Part V of this Notice shall be deemed to have waived such objections.

This notice is not to be understood as an expression of any opinion by the Court as to the merits of any claims or defenses asserted by any party in this lawsuit. This notice is sent for the sole purpose of informing you of the pendency of this lawsuit and the terms of the proposed settlement so that you may make appropriate decisions. In the event of any conflicts between this notice and the Settlement Agreement, the terms of the Settlement Agreement shall govern.

**III. NATURE OF THE LAWSUIT**

In this case, Plaintiffs Richard Rees and Robert Winters has sued Souza's Milk Transportation Co. and Manuel B. Souza, Jr. for nonpayment of overtime to truck drivers for hours worked in excess of forty in a week. Souza's Milk Transportation Co. and Manuel B. Souza, Jr. have denied and continue to deny all of the allegations made by the Plaintiff.

The Plaintiffs, Richard Rees and Robert Winters and Souza's Milk Transportation Co. and Manuel B. Souza, Jr. have tentatively settled this lawsuit. The Settlement has received preliminary approval of the Court, subject to notice

being provided to the members of the Classes and final approval by the Court after a public hearing. This proposed settlement is described in the next section.

If you are a member of one of the Settlement Classes established by the court, you will receive such benefits, if any, as you may qualify for under the proposed Settlement. If the proposed settlement is not approved, then the offer of settlement will be deemed withdrawn and the case will proceed in Court as if no settlement had ever been made.

#### **IV. SUMMARY OF THE RELIEF GRANTED BY THE PROPOSED SETTLEMENT AGREEMENT**

For purposes of settlement, and without admitting any liability, Souza's Milk Transportation Co. and Manuel B. Souza, Jr. have agreed to provide certain relief to persons in the Settlement Classes. The following is only a summary of the relief contained in the proposed Settlement. In the event there are any conflicts between this Notice and the Settlement Agreement, the terms of the Settlement shall govern. For a copy of the proposed Settlement, you may contact Class Counsel, whose name, address, and telephone number are listed below in Part VII. The relief granted by the proposed Settlement Agreement is summarized as follows:

1. Souza's Milk Transportation Co. and Manuel B. Souza, Jr. will pay the total sum ("Sum") of Forty-Five Thousand Dollars (\$45,000.00) less attorney fees and costs awarded to Class Counsel and any incentive awarded to the Class Representatives Richard Rees and Robert Winters. The Sum will be divided between the Classes as follows:

Settlement Class 1 = \$30,000.00

Settlement Class 2 = \$ 2,000.00

2. If you have received a Settlement Class 1 Claim Form, you are a member of Settlement Classes 1. If you have received a Settlement Class 2 Claim Form, you are a member of Settlement Class 2. You have the right to participate in the Settlement by submitting one of these forms, but you are not required to submit the form. However, please remember that:

**IN ORDER TO RECEIVE PAYMENT UNDER THIS SETTLEMENT, EACH SETTLEMENT CLASS MEMBER MUST SUBMIT A CLAIM FORM. IF YOU DO NOT SUBMIT A CLAIM FORM, YOUR SHARE OF THE SETTLEMENT WILL GO TO THE OTHER CLASS MEMBERS.**

3. Any Settlement Class member has the right to object to the proposed settlement by following the procedures set forth in Part V below.
4. Any Settlement Class member has the right to exclude themselves from the proposed settlement by following the procedures set forth in Part VI below.
5. Souza's Milk Transportation Co. and Manuel B. Souza, Jr. will pay reasonable attorneys' fees and costs in a maximum amount not to exceed \$8,500.00. All payments for attorneys' fees and costs will be paid from the Sum before the calculation of payments to each Authorized Claimant. Class Counsel will apply to the court for approval of his attorneys' fees and costs at the hearing scheduled for \_\_\_\_\_, 2009.
6. Plaintiff and Class Representatives Richard Rees and Robert Winters will apply to the Court at the hearing scheduled for \_\_\_\_\_, 2009 for an incentive award not to exceed \$1,000.00 each in recognition of the time and efforts they have expended in this case on behalf of the Classes. These incentive awards shall be paid from the Sum.

Monies paid pursuant to the Settlement are taxable. Souza will make all lawful payroll deductions from any payments paid to Settlement Class members from the Sum as set forth in the Settlement Agreement.

**V. HEARING AND PROCEDURE FOR OBJECTING TO THE SETTLEMENT AGREEMENT**

If you are satisfied with the proposed Settlement Agreement, you do not need to appear at the hearing at which the Court will consider final approval of the Settlement Agreement. If you object to the proposed Settlement Agreement, you must take the following steps (your failure to do so will be deemed a waiver of your objections):

- A. So that it is postmarked by \_\_\_\_\_, 2009, you MUST mail a request by first class postage to all of the following: (i) the Court at United States District Court, Eastern District of California, United States Courthouse, 2500 Tulare Street, Fresno, California 93721-1321, (ii) to Class Counsel, Jerry Budin, Law Office of Jerry Budin, 2401 E. Orangeburg Avenue, Ste. 675-309, Modesto, CA 95355, and (iii) to David Dixon of Dowling, Aaron & Keeler, Inc., 5060 California Avenue, Suite 620, Bakersfield, CA 93309 (Defendants' Counsel).

The request MUST include: (i) a written statement advising if you plan to address the Court at the hearing; (ii) a written statement of your objections; and (iii) any other papers which you propose to submit to the Court, including any legal briefs or memoranda. You may appear personally, or through your own counsel, paid for at your own expense.

- B. If you have satisfied the requirements set forth above, you have the right to address the Court at the hearing scheduled for \_\_\_\_\_, 2009 before the Honorable Lawrence J. O'Neill, U.S. District Judge, United States District Court, Eastern District of California, Courtroom 4, United States Courthouse, 2500 Tulare Street, Fresno, California 93721-1321.

**VI. PROCEDURE FOR EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT AGREEMENT IF YOU ARE CLASS MEMBER**

Even if you do not object to the proposed Settlement Agreement, you may still exclude yourself from the proposed Settlement by taking the following steps.

- A. So that it is postmarked by \_\_\_\_\_, 2009, you MUST mail a request by first class postage to Class Counsel Jerry Budin, 2401 E. Orangeburg, Ste. 675-309, Modesto, CA 95355 if you wish to be excluded from the Settlement. The written request must contain your name, address, telephone number, Social Security number and the dates of your employment by Souza.

- B. If you do submit a request for exclusion, your individual rights, if any, will be preserved and you will have the right if you so choose to pursue those rights, if any, against Souza.

- C. If you do not submit a Request for Exclusion, you will be bound by the Settlement Agreement if it is approved by the Court.

- D. Furthermore, if you do nothing, that is if you do not submit a Claim Form and do not submit a written objection or exclusion, you will be bound by the Settlement Agreement, but will receive no monetary compensation.

**VII. CLASS COUNSEL**

If you have any questions concerning the proposed Settlement Agreement, or this Notice, you may contact Class Counsel Jerry Budin, Law Office of Jerry Budin, 2401 E. Orangeburg, Ste. 675-309, Modesto, California 95355, telephone (209) 544-3030, e-mail address: jerrybudin@msn.com.

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.

**EXHIBIT C**

**United States District Court, Eastern District of California,**

**Fresno Division**

**Richard Rees, et al. v. Souza's Milk Transportation Co. and Manuel B. Souza Jr.**

**Case No. CV F 05-0297 LJO SMS**

**SETTLEMENT CLASS 1 CLAIM FORM**

COMPLETE, SIGN AND MAIL TO:

Jerry Budin  
Law Office of Jerry Budin  
2401 E. Orangeburg, Ste. 675-309  
Modesto, CA 95355

**Must be Postmarked No Later Than: \_\_\_\_\_, 2009**

**YOU MUST TIMELY COMPLETE, SIGN AND RETURN THIS CLAIM FORM  
TO SHARE IN THE MONETARY RECOVERY FROM  
SOUZA'S MILK TRANSPORTATION CO. AND MANUEL B. SOUZA, JR.**

(1) Please type or print the following identifying information:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_ Social Security Number: \_\_\_\_\_  
Telephone Number (Work): \_\_\_\_\_ Telephone Number (Home): \_\_\_\_\_

- (2) By signing below, I understand that I am agreeing to a full and complete release of Souza's Milk Transportation Co. and Manuel B. Souza, Jr., including its present and former officers, directors and owners, shareholders, employer agents, parent companies, subsidiaries and affiliates and representatives of each for any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, actions, lawsuits or causes of action whatever kind or nature, whether known or unknown, liquidated or unliquidated, that I might have, arising out of or in any way related to this action regarding wage and hour or payroll claims, including but not limited to any and all claims for unpaid wages, worked overtime, and waiting time penalties, under both federal and California state law, including the Fair Labor Standards Act, Section 16(b).

I further understand that I am waiving all rights and benefits afforded to me under Section 1542 of the California Civil Code, which provides:

"A general release does not extend to claims which the creditor [employee] does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor [employer]."

X \_\_\_\_\_ Date \_\_\_\_\_  
(Sign your name here)

**MUST BE RETURNED BY \_\_\_\_\_, 2009**



**CLAIM FORM INSTRUCTIONS**

**COMPLETE THE ENCLOSED CLAIM FORM IN ORDER TO BE ELIGIBLE  
FOR MONETARY RECOVERY**

**YOU MUST COMPLETE, SIGN AND MAIL THIS CLAIM FORM BY FIRST  
CLASS U.S. MAIL OR EQUIVALENT, POSTAGE PAID, POSTMARKED ON  
OR BEFORE \_\_\_\_\_, 2009, ADDRESSED AS FOLLOWS, IN ORDER TO  
BE ELIGIBLE TO RECEIVE A RECOVERY.**

**MAIL TO:**

**Jerry Budin  
Law Office of Jerry Budin  
2401 E. Orangeburg, Ste. 675-309  
Modesto, CA 95355**



**EXHIBIT D**

**United States District Court, Eastern District of California,**

**Fresno Division**

**Richard Rees, et al. v. Souza's Milk Transportation Co. and Manuel B. Souza Jr.**

**Case No. CV F 05-0297 LJO SMS**

**SETTLEMENT CLASS 2 CLAIM FORM**

COMPLETE, SIGN AND MAIL TO:

Jerry Budin  
Law Office of Jerry Budin  
2401 E. Orangeburg, Ste. 675-309  
Modesto, CA 95355

**Must be Postmarked No Later Than: \_\_\_\_\_, 2009**

**YOU MUST TIMELY COMPLETE, SIGN AND RETURN THIS CLAIM FORM  
TO SHARE IN THE MONETARY RECOVERY FROM  
SOUZA'S MILK TRANSPORTATION CO. AND MANUEL B. SOUZA, JR.**

(1) Please type or print the following identifying information:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_ Social Security Number: \_\_\_\_\_  
Telephone Number (Work): \_\_\_\_\_ Telephone Number (Home): \_\_\_\_\_

- (2) By signing below, I understand that I am agreeing to a full and complete release of Souza's Milk Transportation Co. and Manuel B. Souza, Jr., including its present and former officers, directors and owners, shareholders, employer agents, parent companies, subsidiaries and affiliates and representatives of each for any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, actions, lawsuits or causes of action whatever kind or nature, whether known or unknown, liquidated or unliquidated, that I might have, arising out of or in any way related to this action regarding wage and hour or payroll claims, including but not limited to any and all claims for unpaid wages, worked overtime, and waiting time penalties, under both federal and California state law, including the Fair Labor Standards Act, Section 16(b).

I further understand that I am waiving all rights and benefits afforded to me under Section 1542 of the California Civil Code, which provides:

"A general release does not extend to claims which the creditor [employee] does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor [employer]."

X \_\_\_\_\_ Date \_\_\_\_\_  
(Sign your name here)

**MUST BE RETURNED BY \_\_\_\_\_, 2009**

**CLAIM FORM INSTRUCTIONS**

**COMPLETE THE ENCLOSED CLAIM FORM IN ORDER TO BE ELIGIBLE  
FOR MONETARY RECOVERY**

**YOU MUST COMPLETE, SIGN AND MAIL THIS CLAIM FORM BY FIRST  
CLASS U.S. MAIL OR EQUIVALENT, POSTAGE PAID, POSTMARKED ON  
OR BEFORE \_\_\_\_\_, 2009, ADDRESSED AS FOLLOWS, IN ORDER TO  
BE ELIGIBLE TO RECEIVE A RECOVERY.**

**MAIL TO:**

**Jerry Budin  
Law Office of Jerry Budin  
2401 E. Orangeburg, Ste. 675-309  
Modesto, CA 95355**